Supreme Court, U. S.
FILED
JUN 1 1979
MICHAEL RODAK, JR., CLERK

# APPENDIX

## In the Supreme Court of the United States

OCTOBER TERM, 1978

**No. 78-1006**

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HAROLD R. BROWN, SECRETARY OF DEFENSE, ET AL.,
*Petitioners*

—*v.*—

CAPT. ALBERT EDWARD GLINES

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI FILED DECEMBER 20, 1978
CERTIORARI GRANTED MARCH 19, 1979

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## RELEVANT DOCKET ENTRIES

| DATE | PROCEEDINGS |
|---|---|
| 1974 | |
| June 14 | Filed Complaint; issued summs<br>Filed ord for proc serv by Miles Frieden |
| June 19 | Filed pltf's mo for TRO & Ord fixing time for hrg mo for pre-injn |
| June 20 | ORD: pltf's mo for TRO—DENIED —SAW |
| Aug 2 | Filed summs on ret: unexec. |
| Aug 19 | Filed Defts' Not of Mot and Mot to Dismiss; supporting memo; and proposed ord, 9-12-74 @ 2:15 p.m. |
| Sep 5 | Filed Stip & ORD for cont hg set for 8/19/74, mo to dism. cont. to 9/26/74, 9am. WHO |
| Sep 12 | Filed Pltfs. Not of Mo & Mo for Leave to Amend Complt., Pts & Auth . . . Proposed Amended Complt . . . Prop. form of ord. 9/26/74, 9am |
| Sep 12 | Filed ORDER for Service by Pat Campbell Clerk |
| Sep 17 | Filed Marshal's Ret on Compl: EXE 9/13/74 by Reg. Mail |
| Sep 20 | Filed Marshal's Ret. on S/C EXE to J. L. Wade 9/14/74 & to Maj. Genl. J. F. Gonge 9/13/74 |
| Sep 23 | Filed Defts. Suppl Memo in Support of Defts. Mo to Dism. C-74-1264 WHO |
| Sep 26 | Filed Afft of Melvin K. Dayley<br>Filed Afft of Patricia Lee Campbell |
| Sep 26 | ORD: Pltfs. Mo to Amend Complt GRANTED . . . Defts. Mo to Dism. DENIED . . . Pre Disc conf to be held in 60 days. WHO |
| Oct 1 | Issued Summons on Amended Complaint |
| Oct 1 | Filed ORDER Granting Pltfs. Mo for Leave to Amend Complt & Denying Defts. Mo. to Dism. |

| DATE | PROCEEDINGS |
|---|---|

1974

Oct 4 Filed *ANSWER TO AMENDED COMPLT.*

Oct 8 Filed Clerk's Not of Pre Disc Conf., 12/17/74, 9am

Dec 17 ORD: Pre Disc Conf., cont to 4/11/75, 9am for PT Conf., 4/21/75, 10am for Trial, Mo for Summ Judgt 2/26/75, 9am WHO

Dec 17 Filed Clerk's Not of PT Conf., 4/11/75, 9am

Dec 20 Filed Ret on Summs on Amended Complt. EXE to Maj. Gen. Rollin B. Moore on 12/17/74

1975

Feb 5 Filed Defts. Not. & Mo to Dism or in the Alternative to Stay Pending Fur Proceedings, Reasons & Auth, Prop form of Ords

Feb 14 Filed Pltfs. Memo in opp to Defts Mo to Dism or in the Alternative to Stay Pending fur Proceedings

Feb. 19 Filed Defts Reply Memo in supp of Mo to Dism, etc.

Feb 20 Filed Defts Suppl Reply Memo in Supp of Mo to Dism

Feb 25 Filed Stip & ORD Cont Hrg on Defts Mo to Dism 3/11/75, 9am —WHO

Mar 12 Filed pltf's 1st Interrogs to defts

Mar 11* ORD: Defts Mo to Dism DENIED, ord to be prepared by Deft WHO

Mar 14 Filed ORDER Denying Defts Mo to Dism or in the Alternative to Stay Pending Fur Proceedings

Mar 26 Filed Stip & ORDER Shortening Time for hrg 4/1/75, 9am WHO

Filed Defts Not. & Mo for Reconsideration of Ord Denying Dism or Remand/and in the Alt Reg for Cert. on Appeal, Memo 4/1/75, 9am



| DATE | PROCEEDINGS |
|---|---|

1975

Mar 27 Filed Pltfs. Memo of Law in Opp to Defts Mo for Reconsideration of Ord Denying Dism or remand & in the alt req for cert. on appeal

Apr 1 ORD: PT Date of 4/11/75 & Trial date of 4/21/75 VACATED, Mots for summ jdugt are to be filed hrg date 5/1/75, 9am WHO

Apr 8 Filed ord. re mo for reconsideration heard 4-1-75; etc.; hearings on mos. set for 5-1-75/9:00; dates for trial & P/T conf previously set are vacated. WHO

Apr 10 Filed deft's no & mo for sumry. judgmt or dismissal and remand, set for 5-1-75/9:00.

Apr 18 Filed deft's ans to pltf's first set of unterrogs.

Apr 21 Filed pltf's no and cross mo for summary judgt.

Apr 24 Filed deft's memo in reply re mo for summary judgt/remand & in response to pltf's X-mo for summary judgt.

Apr 29 Filed stip & ordshortening time to 5-1-75/9:00 for hrg of pltf's mo to amend cmplt; obj. to be filed by 4-30-75/4:00. WHO
Filed pltf's no & mo for leave to amend cmplt set for set for 5/1/75/9:00.

Apr 30 Filed defts' memo regarding pltf's mo for leave to amend cmplt. ORD: mo for summary judgt cont'c to 5-13-75/9:00. WHO

May 8 Filed supplemental memo in support of deft's mo for summary judgt.

Filed pltf's memo of law on applicability of CARLSON vs. SCHLESINGER.

May 13 ORD: pltf's & deft's mos for summary judgt submitted. AJZ

| DATE | PROCEEDINGS |
|---|---|
| 1975 | |
| May 16 | Filed order granting leave to amend cmplt. WHO Filed second amend cmplt. |
| May 30 | Filed memo of opinion and ord; pltf's mo for summary judgt is granted; deft's mo for summary judgt is denied; pltf to prepare and file judgt on or before 6-13-75. WHO |
| June 6 | Filed deft's ans to 2nd amended cmplt. |
| June 9 | Filed deft's ex parte mo for reconsideration and/or clarification of the memo opinion & order. |
| Jun 20 | Filed deft's objections to proposed judgt. Lodged proposed summary judgt. |
| Jul 9 | Filed pltf's reply to defts' objections to prosed judgt, and defts' ex parte mo for reconsideration and/or clarification of the memo opinion and order. |
| Jul 14 | Filed letter from CAPT. CARL H FOSTER IN ANS to pltf's inquiry about the number of days active duty he would have performed as a member of the 301 Military Airlift Squadron during the calendar year 1974. |
| | ORD: hrg re form of judgt; ord proposed form judgt be amended; cont'd to 9-26-75/1:30 for evidentiary hrg re damages . . . WHO |
| Aug 1 | Filed deft's interrogs to pltf. |
| Aug 18 | Filed Pltff's Interrog to Deft's |
| Aug 25 | Filed Deft's Memo in support of Deft's objections to Pltf's proposed judgment, as amended by the court |
| Sept 12 | Filed pltf's ans to interrogs. |
| Sept 16 | Filed pltf's memo of law in support of proposed judgt awarding back pay and benefits, and in oppsn to deft's memo. |
| Sept 19 | Filed deft's answers to interrogs. |



| DATE | PROCEEDINGS |
|---|---|
| 1975 | |
| Sept 23 | Filed deft's reply memo of prosed judgt in awarding back pay and benefits. |
| Sept 26 | ORD: evidentiary hrg re damages; stip to be filed by 10-3-75 re pay rates; addl briefs & papers due by 10-3-75. WHO |
| Oct 3 | Certificate of plaintiff's attorney concerning plaintiff's earnings. |
| | Plaintiff's memorandum of law construing MOORE v. SCHLESINGER 384 F. Supp. 163 (D. Colo. 1974) |
| Oct 15 | Stipulation setting forth items to be used in determining amount of back pay due plaintiff if ordered by Court. |
| Dec 1 | OPINION and ORDER: ordered that GLINES recover back pay; plaintiff to submit by 12-15-75 a certificate of counsel setting forth the sum of money due GLINES as back pay, etc. (WHO) |
| Dec 10 | Civil subpoen executed—THOMAS WICK. |
| | Civil subpoena executed—RICHARD DAUM. |
| | Civil subpoena executed—CARL FOSTER. |
| Dec 19 | Defendant's notice of motion and motion for stay pending appeal, 1-9-76/1:30. |
| 1976 | |
| Jan 5 | Defendants' affidavit of STEPHEN SHEFLER |
| Jan 6 | ORDER that hearing of defendant's motion for stay pending appeal is continued to 1-16-76/1:30. (WHO) |
| Jan 12 | Plaintiff's memorandum of law in opposition to defendants motion for stay pending appeal. |
| Jan 13 | Defendant's reply to plaintiff's memorandum in opposition, |

| DATE | PROCEEDINGS |
|---|---|
| 1976 | |
| Jan 16 | MINUTE ORDER: defendant's motion to stay order pending appeal granted; defendant to prepare order. (WHO) |
| | Entered JUDGMENT. (WHO) |
| Jan 19 | Defendant's Notice of Appeal. |
| Jan 21 | ORDER staying Judgment pending appeal. |
| Jan 20 | Stipulation setting forth back pay due plaintiff for 1974 and 1975. |
| Jan 23 | Appellant's designation of record on appeal. |
| Jan 30 | Appellee's designation of record on appeal. Appellee's order for reporter's transcript. |
| Feb 12 | Plaintiff's bill of costs in amount of $163.20. |
| Feb 26 | Reporter's transcript of 9-26-75, original and one copy. |
| Feb 27 | MAILED RECORD ON APPEAL TO 9th CCA and COPIES TO COUNSEL OF RECORD. |



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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Category: CIVIL RIGHTS

No. C-74-1264 SAW

ALBERT EDWARD GLINES, Captain USAF Reserves, PLAINTIFF

*vs.*

JAMES L. WADE, Commander 349th Material Airlift Wing; MAJOR GENERAL ROLLIN B. MOORE, JR., Commander Western Air Force Reserve Region; MAJOR GENERAL JOHN F. GONGE, Commander 22d Air Force; JOHN L. MCLUCAS, Secretary of the Air Force; JAMES SCHLESINGER, Secretary of Defense, DEFENDANTS

# AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, MANDAMUS, AND INJUNCTIVE RELIEF

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For his complaint against the above-named defendants, plaintiff alleges:

## JURISDICTION

* 1. This action arises under the First and Fifth Amendments to the United States Constitution; 10 U.S.C. 1034; and the rules, regulations, and directives of the Department of Defense and the United States Air Force.

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* Indicates that an amendment appears within the paragraph.

This Court has jurisdiction under 28 U.S.C. §§ 1331, 1346, 1651, 2201, and 2202. The amount in controversy exceeds ten thousand dollars, exclusive of interest and costs. In so far as this action involves claims for monetary relief, such claims amount to less than ten thousand dollars. Venue is proper under 28 U.S.C. 1331(e). Each defendant is an officer or employee of the United States or an agency thereof acting in his official capacity or under color or legal authority. This action is brought in the judicial district in which (1) a defendant in the action resides, or (2) the claim arose.

## PARTIES

2. At all times mentioned herein, plaintiff ALBERT E. GLINES was Captain, United States Air Force Reserve, assigned to the 301st Material Airlift Squadron of the 349th Material Airlift Wing, Travis Air Force Base, California.

* 3. Defendant Colonel JAMES L. WADE is the Commander, 349th Material Airlift Wing. Defendant Major General MOORE is Commander, Western Air Force Reserve Region. Defendant Major General GONGE is Commander, 22nd Air Force. Defendant JOHN L. MCLUCAS is Secretary of the Air Force. Defendant JAMES SCHLESINGER is Secretary of Defense. Each Defendant is sued in his official capacity.

## FACTS

4. At all times mentioned herein, plaintiff ALBERT E. GLINES was a Captain, USAFR, assigned to the 301st MASq of the 349th Material Airlift Wing. Plaintiff has served many years as an aircraft navigator, and has a total of 9 years, 8 months, and 17 days active duty service. Although a reservist, plaintiff spent a total of 237 days of active duty in 1973, and was on active duty status during 1974 continuously through April 17, 1974. Captain GLINES has an outstanding record as a military officer, having received the Air Force Medal (Exhibit A) among other decorations. In an officer effectiveness report, his superior officers in July 1972 stated that "Captain Glines clearly is the most competent navigator within my flight, and probably the most competent within the entire group." (Exhibit B, Page B-2). On April 3, 1973, plaintiff was rated as an "energetic, zealous officer with a cooperative attitude. He is easy to get along with and gets along well with others. He has excellent potential and is a dedicated officer." (Exhibit C) In another effectiveness report dated October, 1973, the rater concluded that "Captain Glines has performed his duties in an exceptionally fine manner throughout the period of this report." (Exhibit D) His military fitness reports are all highly complimentary, and even a cursory examination of his record shows him to be an outstanding officer.



5. In January, 1974, defendant Colonel JAMES L. WADE assumed command of the 301st MAW. During his initial briefing of the men under his command, Colonel WADE stated that it was his intent to have an open door policy. In commenting on the hair cut policy of the wing, Colonel WADE stated that he did not believe that aircraft crews should fail qualification checks for long haircuts (as was the previous policy), but that offenders should be courts-martialed and tried by their peers. He stated that he personally did not like the Air Force hair cut regulation, and that at a previous duty assignment, he had allowed an airman's hair to grow longer than regulation and had submitted pictures of it to higher headquarters in an attempt to get the regulation changed to the longer style. He stated that his endeavor was unsuccessful. He further stated that while he would require compliance with the current Air Force regulation, he was not opposed to attempts to change the regulation by working within the system. He stated that "If someone were to bring a properly worded petition to me, I'd be the first to sign it."

6. In March of 1974, Defendant Colonel WADE further stated his beliefs concerning the Air Force hair regulation at a Junior Officers Council meeting at the Officers Club, Travis Air Force Base. To demonstrate his beliefs, he wore a long-hair wig to the meeting, and

addressed the meeting, in uniform, wearing the long-hair wig. He again stated his position that he would sign a properly worded petition seeking to change the hair cut regulation.

7. In February of 1974, plaintiff sought legal advice about the circulating of a petition concerning the hair cut regulation. Plaintiff talked at length to Captain Marks, a military lawyer, who was attached to the Judge Advocate General's office at Travis Air Force Base. Plaintiff showed Captain Marks a draft of the proposed petition (Exhibit E), and Captain Marks advised plaintiff that on the basis of A.F. Regulation 35-15, plaintiff could not circulate a petition on base without first securing the permission of the base commander or his wing commander. Captain Marks further advised plaintiff that the circulation of a petition was not proscribed off base even without first securing such permission. Plaintiff requested and was given a copy of A.F. Regulation 35-15.

8. Thereafter, plaintiff went to Defendant Colonel WADE and showed him the draft of the proposed petition. (Exhibit E) Colonel WADE read the draft, and then told plaintiff that he thought plaintiff was "making a mistake." Plaintiff reminded Colonel WADE of his previous statements that he himself was ready to sign a petition, to which Colonel WADE replied that the regular Air Force officers were just beginning to accept the reservists, and the circulating of this petition would undo his work. Colonel WADE stated that plaintiff was asking for trouble if he circulated the petition, but that it was up to plaintiff whether he wanted to circulate it. Colonel WADE did not advise plaintiff to refrain from circulating the petition, but stated that he personally did not agree with circulating it.

9. Plaintiff then decided that if he were to circulate a petition, it would be off base, and did not formally seek the approval of the base commander. Because he feared that his superior officers would retaliate for his circulating the petition (even off base) by citing him for improper hair length, plaintiff decided to minimize this possibility by shaving his head bald. At least one other



officer in plaintiff's unit customarily had shaved his head. Colonel WADE's reaction was to laugh and to use plaintiff in a light-hearted way as an example at his briefings as one officer whose hair cut came within regulations.

10. Plaintiff subsequently had the petition printed at a privately owned print shop off base, paying for the printing job himself. The petition (attached hereto as Exhibit F) consists of five pages stapled together, with separate pages constituting petitions addressed to Senator Cranston, Senator Tunney, Senator Jackson, Congressman Moss, and the Secretary of Defense.

11. The printing job was completed on April 9, 1974, and thereafter plaintiff began placing copies of the petition in various stores and private businesses located near Travis AFB, California.

12. One week later, plaintiff was assigned to a routine training flight to the far east, with stops in Guam and Japan. When the aircraft landed in Guam and plaintiff was still in the process of securing his navigational and personal gear on board the aircraft, a party of ground maintenance troups assigned to Anderson AFB, Guam boarded the aircraft. An unsigned copy of the aforementioned petition was among plaintiffs papers, and a member of the ground party asked to see it. The copy was unsigned and the ground crew member asked whether he could have the copy. Plaintiff replied that he could, but that he should not attempt to get signatures on it while on base. Plaintiff explained that the petition could not be circulated on base without the base commander's approval, and if he wanted to collect signatures on the petition, he should do so off base. Plaintiff gave the ground crew member a card with plaintiff's name and address on it, stating that if he had any questions, he should get in touch with plaintiff. Plaintiff had no further contact with the ground crew member, and having just completed a 20 hour work day, retired for the night.

13. The following morning, Colonel Harley S. Black, the commander of the MAC detachment at Anderson AFB, Guam, called petitioner's aircraft commander, and demanded to know about "the petition to the senators."

Plaintiff talked to Col. Black, informed him that he had brought in petitions on the training flight, but that plaintiff did not know how the petitions could have got around and would check.

14. Plaintiff ascertained that the only petition that had left his possession was the one given to the ground crew member the previous night. Plaintiff then called the base legal office to see whether he had violated any local regulations or whether his action was wrongful in any other way. Plaintiff talked to a JAG officer, Captain Petrowski, who advised plaintiff that he had not violated any regulation, and stated that he felt that Col. Black was overreacting to the incident because Col. Black had already called the legal office in an outrage.

15. Subsequently, on the second leg of the training flight in Japan, plaintiff was informed that he should contact 22d Air Force for instructions, by order of Major General GONGE, Commander of 22d Air Force. Instructions were given for plaintiff to report to his commander immediately upon landing at Travis AFB, California.

16. Plaintiff met with defendant Colonel WADE, commander of the 349th MAC Wing, upon landing. Colonel WADE informed plaintiff that Major General GONGE was ordering a complete investigation of the incident in Guam and had his chief legal advisers working on it, and that Major General GONGE had stated that plaintiff would never again be allowed to fly on a 22d Air Force aircraft. Colonel WADE then told his operations officer, Major William C. White, to order plaintiff off active duty, effective at midnight that day. Major White did so (Exhibit G), and plaintiff returned to his home.

17. On April 25, 1974, plaintiff engaged in a lengthy telephone conversation with Major William O. White, the wing operations officer. Major White informed plaintiff that he had been given until May 8, 1974 to resign from the unit, or paperwork would be processed through reserve headquarters to remove plaintiff from Active Reserve Status. Major White stated that unless plaintiff voluntarily resigned, he would probably lose his commission.



18. On April 26, 1974, plaintiff was advised by letter (Exhibit H) from defendant Colonel WADE that he was to be removed from his unit and transferred to the Standby reserve. This letter stated that plaintiff had until May 8, 1974 to submit any evidence bearing upon his case, and that on that date the entire case would be forwarded to reserve headquarters for finalization. The letter states that such action is taken in accordance with the provisions of Table 12-1, Rule 8, Air Force Manual 35-3 (attached hereto as Exhibit I).

19. On April 29, 1974, plaintiff was again advised by Major White to resign. Major White stated that plaintiff's case had already been decided, and that plaintiff would never be able to get into any reserve unit and would lose his commission if he did not resign.

* 20. Plaintiff then requested that he be given a copy of the evidence that was to be forwarded to reserve headquarters to justify his being taken off active duty status. Although initially denied access to and copies of such information, plaintiff was finally given the material attached hereto as Exhibit J. Plaintiff was shown a copy of a letter by a Colonel Hollingshead, which was part of the material which was to be forwarded, but was denied a copy. Plaintiff has, since that time, obtained a copy of Colonel Hollingshead, which letter is attached hereto as Exhibit J1. This material was forwarded to Defendant Major General ROLLIN B. MOORE, JR.; Commander, Western Air Force Reserve Section. Major General MOORE then forwarded this material to USAF Reserve Headquarters with his recommendation that Plaintiff be transferred to Standby reserve status under AFM 35-3. A copy of this letter is enclosed and marked Exhibit J2.

* 21. Following being removed from active duty by order of Colonel WADE on April 17, 1974, plaintiff continued to attend his unit's monthly weekend drills (Unit Training Activities), but was denied further active duty. Plaintiff had previously been scheduled to be on active duty continuously from January 1, 1974 through April 26, 1974, and thus was denied nine days of active

duty by reason of defendant Colonel WADE's action in removing him from active duty effective April 17, 1974. Plaintiff additionally had been authorized to attend a training seminar from May 6 to 17, 1974 (Exhibit K), and that authorization was also cancelled by reason of Colonel WADE's action in removing plaintiff from active duty. The training seminar would have lasted 13 days, with two additional days travel time, for a total of 15 days of active duty. Plaintiff thus has been denied a grand total of 24 days active duty for which plaintiff would have been paid $1,176.00 net pay and allowances.

(new) 21-A. On June 27, 1974 Major General Earl O. Anderson, Vice Commander Air Force Reserve, granted authority to reassign Plaintiff to Standby reserve in accordance with Rule 10, Table 8-1, Chapter 8, AFR 35-41. A copy of that authorization is enclosed as Exhibit K1.

(new) 21-B. On July 3, 1974 Plaintiff was informed of the above-mentioned authorization and, in accordance therewith, was transferred to the Standby reserve, effective July 10, 1974. A copy of that reassignment notice is enclosed as Exhibit K2.

* 22. Plaintiff has more than 13 years total service with the USAF (see Exhibit L). In order to qualify for any retirement benefits as a reservist, plaintiff must accumulate 20 years of service. If he remains on standby reserve status, he cannot accumulate further service time for purposes of retirement. Plaintiff is thus threatened with the loss of many years of work done with the expectation that retirement benefits were being accrued.

23. Plaintiff has been informed and believes that defendant Colonel WADE's purpose in attempting to transfer plaintiff to Standby Reserve status is to deprive plaintiff of his livelihood as a navigator and his status as an officer. Plaintiff is informed and believes that he will lose his commission as a further consequence of being transferred to the Standby Reserves.



## BASIS FOR EQUITABLE RELIEF

* 24. Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for mandamus declaratory judgment and injunctive relief is his only means of securing adequate redress from the unlawful orders and other actions of defendants.

* 25. Unless the Court supplies the relief requested by plaintiff, he will suffer irreparable injury. If plaintiff remains Standby Reserve status, he will lose further active duty pay and allowances, will lose all right to retirement benefits built up over the course of many years service, and will lose his rating as a navigator.

* 26. No irreparable injury to the operation of the USAF would result if plaintiff is placed in Ready Reserve status pending the determination of this Court. He had been attending the regular monthly drills of his unit and can continue to do so.

## CLAIMS FOR RELIEF

* 27. The punishment imposed upon plaintiff by removing him from active duty and transferring him to Standby Reserve status are violative of plaintiff's constitutional rights. Such punishment, imposed for the reason that plaintiff printed and distributed a petition to governmental officials, violates the due process clause of the Fifth Amendment and violates plaintiff's right to assemble and petition congress for redress of grievances under the First Amendment. In addition, such punishment violates 10 U.S.C. § 1034, which provides: "No person may restrict any member of the Armed Forces in communicating with a member of congress unless the communication is unlawful or violates a regulation necessary to the security of the United States."

WHEREFORE, plaintiff prays that this Court enter its order and judgment:

* (1) declaring that the actions of defendants in removing plaintiff from Active Duty and transferring him to the Standby Reserve violated plaintiff's rights under

the First and Fifth Amendments to the Constitution of the United States and under 10 U.S.C. § 1034;

* (2) deleted

(3) enjoining and ordering defendants to cease and refrain from any and all punitive actions taken or threatened to be taken by reason of his printing and circulating a petition to governmental officials;

(4) restoring plaintiff to all benefits and privileges to which he was entitled to prior to his removal from active duty status on April 17, 1974, including future active duty;

(5) mandating that plaintiff be paid the amount he would have been paid if he had not been unlawfully removed from active duty, the sum of $1,176.00.

(6) for such further and additional relief as the Court may deem appropriate; and

(7) awarding costs of this action and reasonable attorneys fees to plaintiff.

DATED: 9-11-74

Respectfully submitted,

BREECKER, COBIN & DAYLEY

by /s/ David M. Cobin
DAVID M. COBIN



## VERIFICATION

STATE OF CALIFORNIA )
)
COUNTY OF ALAMEDA ) ss.

ALBERT E. GLINES, being first duly sworn, deposes and says that he is the plaintiff in this proceeding; that he has read the foregoing Amended Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein alleged on information and belief and that as to those matters, he believes them to be true.

Dated: 9/11/74

/s/ Albert E. Glines
ALBERT E. GLINES

Subscribed and Sworn to before me this 11th day of September, 1974.

/s/ Melvin K. Dayley

Notary Public in and For Said
County and State

DEAR SENATOR CRANSTON:

WE, THE UNDERSIGNED, ALL AMERICAN CITIZENS SERVING IN THE ARMED SERVICES OF OUR NATION, REQUEST YOUR ASSISTANCE IN CHANGING THE GROOMING STANDARDS OF THE UNITED STATES AIR FORCE.

WE FEEL THAT THE PRESENT REGULATIONS ON GROOMING HAVE CAUSED MORE RACIAL TENSION, DECREASE IN MORALE AND RETENTION, AND LOSS OF RESPECT FOR AUTHORITIES THAN ANY OTHER OFFICIAL AIR FORCE POLICY.

WE ARE SIMILARLY PETITIONING SENATOR TUNNEY, SENATOR JACKSON, CONGRESSMAN MOSS, AND THE SECRETARY OF DEFENSE IN THE HOPE THAT ONE OF OUR ELECTED OR APPOINTED OFFICIALS WILL HELP CORRECT THIS PROBLEM.



DEAR SECRETARY OF DEFENSE:

WE, THE UNDERSIGNED, ALL AMERICAN CITIZENS SERVING IN THE ARMED SERVICES OF OUR NATION, REQUEST YOUR ASSISTANCE IN CHANGING THE GROOMING STANDARDS OF THE UNITED STATES AIR FORCE.

WE FEEL THAT THE PRESENT REGULATIONS ON GROOMING HAVE CAUSED MORE RACIAL TENSION, DECREASE IN MORALE AND RETENTION, AND LOSS OF RESPECT FOR AUTHORITIES THAN ANY OTHER OFFICIAL AIR FORCE POLICY.

WE ARE SIMILARLY PETITIONING SENATOR CRANSTON, SENATOR TUNNEY, SENATOR JACKSON, AND CONGRESSMAN MOSS IN THE HOPE THAT ONE OF OUR ELECTED OR APPOINTED OFFICIALS WILL HELP CORRECT THIS PROBLEM.

DEAR SENATOR JACKSON:

WE, THE UNDERSIGNED, ALL AMERICAN CITIZENS SERVING IN THE ARMED SERVICES OF OUR NATION, REQUEST YOUR ASSISTANCE IN CHANGING THE GROOMING STANDARDS OF THE UNITED STATES AIR FORCE.

WE FEEL THAT THE PRESENT REGULATIONS ON GROOMING HAVE CAUSED MORE RACIAL TENSION, DECREASE IN MORALE AND RETENTION, AND LOSS OF RESPECT FOR AUTHORITIES THAN ANY OTHER OFFICIAL AIR FORCE POLICY.

WE ARE SIMILARLY PETITIONING SENATOR CRANSTON, SENATOR TUNNEY, CONGRESSMAN MOSS, AND THE SECRETARY OF DEFENSE IN THE HOPE THAT ONE OF OUR ELECTED OFFICIALS WILL HELP CORRECT THIS PROBLEM.



DEAR SENATOR TUNNEY:

WE, THE UNDERSIGNED, ALL AMERICAN CITIZENS SERVING IN THE ARMED SERVICES OF OUR NATION, REQUEST YOUR ASSISTANCE IN CHANGING THE GROOMING STANDARDS OF THE UNITED STATES AIR FORCE.

WE FEEL THAT THE PRESENT REGULATIONS ON GROOMING HAVE CAUSED MORE RACIAL TENSION, DECREASE IN MORALE AND RETENTION, AND LOSS OF RESPECT FOR AUTHORITIES THAN ANY OTHER OFFICIAL AIR FORCE POLICY.

WE ARE SIMILARLY PETITIONING SENATOR CRANSTON, SENATOR JACKSON, CONGRESSMAN MOSS, AND THE SECRETARY OF DEFENSE IN THE HOPE THAT ONE OF OUR ELECTED OFFICIALS WILL HELP CORRECT THIS PROBLEM.

DEAR CONGRESSMAN MOSS:

WE, THE UNDERSIGNED, ALL AMERICAN CITIZENS SERVING IN THE ARMED SERVICES OF OUR NATION, REQUEST YOUR ASSISTANCE IN CHANGING THE GROOMING STANDARDS OF THE UNITED STATES AIR FORCE.

WE FEEL THAT THE PRESENT REGULATIONS ON GROOMING HAVE CAUSED MORE RACIAL TENSION, DECREASE IN MORALE AND RETENTION, AND LOSS OF RESPECT FOR AUTHORITIES THAN ANY OTHER OFFICIAL AIR FORCE POLICY.

WE ARE SIMILARLY PETITIONING SENATOR CRANSTON, SENATOR TUNNEY, SENATOR JACKSON, AND THE SECRETARY OF DEFENSE IN THE HOPE THAT ONE OF OUR ELECTED OFFICIALS WILL HELP CORRECT THIS PROBLEM.



EXHIBIT G

DEPARTMENT OF THE AIR FORCE

Headquarters 349th Military Airlift Wing
(Associate) (AFRes)
Travis Air Force Base, California 94635

[SEAL]

17 April 1974

REPLY TO
ATTN OF 301CC (3361)

SUBJECT Administrative Hold

TO Capt Albert E. Glines

1. Effective immediately, you are placed in administrative hold and will not be scheduled for flying activities until cleared by the 349 MAWg Commander's office.
2. Your tour of Active Duty is terminated effective 2400 hours, 17 April 1974. No further Active or Inactive Duty for Training will be approved without formal notification.

/s/ William O. White, Jr.
WILLIAM O. WHITE, JR., Major, USAFR
Operations and Training Officer, 301 MASq

Cy to: 349 MAW/CC
Major Cooney

EXHIBIT H

CC 26 April 1974

Reassignment to ARPC and Transfer to Straight Reserve Status

Capt Albert E. Glines
Rte 1, Box 200
Gerber, CA 96035

1. It is my intention to recommend to the Commander of AFRES that you be reassigned to ARPC and transferred to the Standby Reserve in accordance with the provisions of Table 12-1, Rule 8, AFM 35-3. This action is being taken based on your failure to meet the professional standards expected of an officer in the Air Force Reserve.

2. On 15 April 74, while in ... active duty status at Anderson AFB, you introduced into the system a petition which brought undue embarrassment on the Air Force Reserve. This action was committed even though I had verbally advised you in advance that your circulation of a petition would certainly bring discredit to the Air Force Reserve and that you were to refrain from such conduct.

3. In prior personal contact you were advised that you should comply with Air Force standards. Your response to this advice was to have your head shaved to a bald condition. Conduct portrayed by the above actions cannot be tolerated in an Air Force Reserve officer.

4. This is to advise you that you may submit any document in your behalf and that all documents and evidence bearing on the case will be submitted to the Commander of AFRES for final determination. Any documentation you may desire to submit must be forwarded to arrive this headquarters not later than 8 May 74 on which date the entire case will be forwarded for finalization.

/s/ James L. Wade
JAMES L. WADE, Colonel, USAFR
Commander



J-5

DEPARTMENT OF THE AIR FORCE

605th Military Airlift Support Squadron (MAC)
APO San Francisco 96334

[SEAL]

19 April 1974

Major General John F. Gonge
Commander, Twenty-Second Air Force
Travis Air Force Base, California

Dear General Gonge,

Attached please find two statements made by members of my command relating to their involvement with a petition which was reported and forwarded in my earlier letter.

All told eight of my personnel were signatories to the petition, each feeling, I susject, it was a "noble cause" and thus, in need of their support. The members were young, junior enlisted types, all of whom have since been counselled and shown the error of their ways.

I should think that additional and more detailed information ought to be forthcoming from an interview with Captain Glines. I would appreciate it if I could be notified and informed of the final disposition of this incident.

Sincerely,

/s/ Harley S. Black
HARLEY S. BLACK, Colonel, USAF
Commander

2 Atch

1. Statement, Sgt Bradley M. Wolf, FR354-44-2199
2. Statement, Sgt Jerry G. Alexander, FR545-78-5916

Global in Mission . . . Professional in Action

J-6

STATEMENT

At approximately 0300 hours, 15 April 1974, I, Sgt Bradley M. Wolf, FR354-44-2199, entered a C-5A aircraft, 69-0002, to perform routine maintenance. While on the aircraft, I was approached by a crew member, whom I believe was an officer, and given a petition dealing with the Air Force grooming standards. Along with the petition I was given a name and address of an individual in California to whom we were to send the petition. The individual's name and address is Al Glines, Rt Box 200, Gerber, Calif, 96035. I carried the subject petition off the aircraft and brought it to my shop where it remained. A few individuals came to my shop, read the subject petition, agreed with the material in the petition, and signed it, myself included. At no time were there any solicitations of signatures involved by anyone. I was relieved from duty at approximately 0730 hours. When I left the section the subject petition still remained on our shop's desk. This is the only involvement I had with the petition until I was called to explain my involvement to Colonel Black.

/s/ Bradley M. Wolf
BRADLEY M. WOLF, FR354-44-2199
Sgt. USAF
Radio Shop



J-7

STATEMENT

At approximately 0400 hours on the 15th of April 1974 I, Sgt Jerry G. Alexander FR545-78-5916, was in the Radio Shop 605MASS, Andersen AFB, Guam. I noticed a petition on the desk and read it. My understanding at that time was that the petition came from an air crew member on MAC aircraft C-5A 690002 which a number of other members of the 605th and myself had just returned from. Because I agreed in principle with the petition, being in regards to the reevaluation of Air Force grooming standards. I signed the petition. I saw a few of the other members of the Avionics Branch sign it also, but no one prompted me and, to my knowledge, no one else was prompted to sign the petition. These are the circumstances that I encountered in this incident.

/s/ Jerry G. Alexander
JERRY G. ALEXANDER, Sgt, USAF
FR545-78-5916

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Category: CIVIL RIGHTS

No. C-74-1264 SAW

ALBERT EDWARD GLINES, Captain USAF Reserves, PLAINTIFF

*vs.*

JAMES L. WADE, Commander 349th Material Airlift Wing; MAJOR GENERAL ROLLIN B. MOORE, JR., Commander Western Air Force Reserve Region; MAJOR GENERAL JOHN F. GONGE, Commander 22d Air Force; JOHN L. MCLUCAS, Secretary of the Air Force; JAMES SCHLESINGER, Secretary of Defense, DEFENDANTS

## AFFIDAVIT

Affiant, being first duly sworn upon his oath, deposes and states as follows:

I am John F. Gonge, Major General, United States Air Force, and a named defendant in the above styled action. I am now, and have been continuously since 29 August 1972, the Commander, Twenty-Second Air Force, Military Airlift Command, headquartered at Travis Air Force Base, California.

As Commander of Twenty-Second Air Force, I am the operational manager of global military airlift operations for the extra extending, pole to pole, westward from the Mississippi River to the eastern border of India.

The 349th Military Airlift Wing (Associate), United States Air Force Reserve, is headquartered at Travis Air Force Base, California, and is an essential part of Twenty-Second Air Force. Members of the Wing are fully integrated into Twenty-Second Air Force operations and serve, during periods of active duty training, as aircrew members on missions throughout the Twenty-Second Air Force area of responsibility as associates of



the 60th Military Airlift Wing, a regular Air Force organization at Travis Air Force Base, California.

Because the role of Twenty-Second Air Force is so vital to the security and defense of the United States, and because Twenty-Second Air Force aircrews operate highly sophisticated aircraft on demanding overseas missions, it is essential that members of these aircrews be of the highest qualifications in their specialty and maintain at all times, the highest professional standards.

During late April 1974, it was brought to my attention that, on 15 April 1974, Albert E. Glines, Captain, United States Air Force Reserve, 349th Military Airlift Wing, while serving on active duty training as a crewmember on a Twenty-Second Air Force aircraft, had allegedly distributed to other Air Force members a written petition, addressed to the Secretary of Defense, during a stop of his aircraft at Andersen Air Force Base, Guam.

I thereupon directed the Commander, 605th Military Airlift Support Squadron, senior commander under my jurisdiction at Andersen Air Force Base, to inquire into the truthfulness of this allegation and the surrounding circumstances, and to report his findings to me. In due course he advised me that Captain Glines had indeed distributed such a petition to a young Air Force Sergeant, while on the flightline at Andersen Air Force Base, and the Sergeant had passed the petition on to several friends. He further advised me that Captain Glines had not obtained permission from the Base Commander at Andersen Air Force Base, to distribute this petition.

Since distribution of such a petition by an Air Force member, without prior permission of the Base Commander concerned, is a clear violation of Air Force Regulation 35-15, dated 12 June 1970, and Military Airlift Command Supplement one thereto, dated 27 April 1973, I began to have serious doubts regarding Captain Glines' judgment and professional qualifications. I discussed the incident with the Commander, 349th Military Airlift Wing, and concluded therefrom, that Captain Glines did not meet the professional standards required of crew members on Twenty-Second Air Force aircraft.

I therefore advised the Commander, 349th Military Airlift Wing that I desired that Captain Glines no longer be permitted to serve as a crewmember on Twenty-Second Air Force aircraft.

Further affiant sayeth not.

/s/ John F. Gonge
JOHN F. GONGE, Major General, USAF

Subscribed and sworn to before me this 7th day of April 1975 at Travis Air Force Base, California.

/s/ Carolyn V. Bradley
Notary Public in and For Said County and State



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-74-1264 WHO

ALBERT EDWARD GLINES, Captain USAF Reserves,
PLAINTIFF

*vs.*

JAMES L. WADE, ET AL., DEFENDANTS

## OPINION AND ORDER

This lawsuit brings into question the authority of the federal courts to safeguard the constitutional rights of members of the military. Plaintiff, a captain in the Air Force Reserves, was transferred from the Active to the Standby Reserves because he circulated a petition without first complying with existing base petitioning regulations. On cross-motions for summary judgment in this case, this Court has previously determined that the pertinent Air Force regulations were unconstitutionally overbroad and that the transfer violated plaintiff's First Amendment rights.[1] The proper amount of damages, if any, due plaintiff as compensation for this unconstitutional transfer, raising disputed factual issues, was not resolved by the cross-motions and is the sole question presently before the Court.

The evidence on damages was presented to the Court, sitting without a jury. For the reasons hereinafter set forth, I find that plaintiff is entitled to recover the back pay he would have earned had he not been illegally transferred from the Active Reserves, minus his civilian earnings.

### I.

Captain Glines has been a member of the Air Force Reserves for over 15 years. In April, 1974, while on Active Duty Status at Travis Air Force Base, he cir-

[1] Memorandum Opinion and Order filed May 3, 1975.

culated a petition aimed at relaxing Air Force hair-length regulations. Because Captain Glines failed to comply with base regulations requiring prior approval for the distribution of petitions, he was removed from Active Duty Status to the Standby Reserves. Due to this change in assignment, Captain Glines has lost, and continues to lose, pay and pension benefits.

The letter notifying Captain Glines of his dismissal from the Active Reserves and his transfer to the Standby Reserves stated that his actions in circulating the petition and shaving his head to a bald condition demonstrated that he had failed "to meet the professional standards expected of an officer in the Air Force." Although the letter of dismissal stated dual reasons for the Air Force actions, the defendants have admitted that had it not been for the distribution of the petition the decision to remove Captain Glines from Active Duty would not have been made at that time.

Following his reassignment, Captain Glines unsuccessfully attempted to obtain a steady job in civilian employment. He also tried to be reclassified for Active Duty with the Air Force Reserves, either with his own or with some other unit. In his effort to be reclassified, Captain Glines spoke with several officials in his former Air Force unit as well as with sis congressman. After these informal efforts failed, Captain Glines filed a formal application seeking reassignment on an Active Duty basis with another reserve unit. All of these efforts proved fruitless. Since his transfer to the Standby Reserves, Captain Glines has only been able to find civilian employment on a part-time and infrequent basis.

## II.

Defendants first contend that Captain Glines is not entitled to reinstatement or back pay since dismissal from the reserves or transfers within the military are matters wholly within the discretion of the military. 10 U.S.C. § 1162 (1956); *Orloff* v. *Willoughby*, 345 U.S. 83 (1953). While it is true that the President has broad discretion to discharge reservists and the Supreme Court has cautioned the judiciary about interfering in internal mili-



tary affairs, neither Section 1162 nor *Orloff* immunizes military discharges or transfers from judicial review when these actions abridge a serviceman's constitutionally protected rights. *Carter* v. *United States*, 509 F.2d 1150, 1156 (Ct. Cl. 1975); *Cortright* v. *Resor*, 447 F.2d 245, 254-255 (2d Cir. 1971); *Zitser* v. *Walsh*, 352 F.Supp. 438, 442-443 (D. Conn. 1972). The protection of First Amendment rights, even of citizens who are members of the military, is a matter of federal judicial concern and cannot be relegated to the exclusive province of the military. Here, Captain Glines was transferred in retaliation for his petitioning activities although these activities were protected by the First Amendment. The military cannot preclude judicial review of this unconstitutional punishment.

The defendants try to narrow judicial intervention by distinguishing between military discharges and transfers within the military. It is the defendants' position that there is no redress for a serviceman whose constitutional rights are curtailed, no matter how severely, just as long as the military actions fall short of a discharge. However, in *Glazier* v. *Hackel*, 440 F.2d 592, 597 (9th Cir. 1971), this Circuit rejected the same contention, holding that the propriety of judicial review cannot logically depend on whether the military action has taken the form of a discharge or duty reassignment order.

The defendants finally contend that the facts here do not warrant judicial intervention since Captain Glines was transferred for the dual reasons that he (1) had shaved his head and (2) also circulated a petition. The Air Force admits that the petitioning activities were at least part of the motivation for the reassignment.

The existence of a dual motive or independent grounds for transfering Captain Glines cannot legitimate the Air Force actions. It is well settled than an individual's constitutional rights may not be circumvented by simply intertwining a constitutionally permissible and constitutionally impermissible bases for the infringement. Where, as here, at least part of the motivation was or could have been retaliation for the exercise of First Amend-

ment rights, the constitutionally permissible cannot be severed from the impermissible, and the punishment cannot stand. *Thomas* v. *Collins*, 323 U.S. 516 (1944); *Street* v. *New York*, 394 U.S. 576 (1969).

III.

As a general rule, a reservist is entitled to recover back pay to compensate him for an illegal discharge (or transfer) as long as the serviceman was willing and able to serve. *Carter* v. *United States*, *supra* at 1155. While there will necessarily be some uncertainty as to the exact amount of constructive Active Duty pay due an illegally-transferred serviceman, this uncertainty works an equal hardship on all parties. The Court will not deny an award of back pay by conjecturing that the serviceman might in any event have been legitimately terminated or transferred, nor will the Court increase the amount of damages by speculating on any promotions the serviceman might have obtained.

In this case the evidence established that but for his petitioning activities, Captain Glines would have successfully completed his navigator instructor upgrade training program [2] and would have remained on Active Duty on the same basis as the other members of his reserve unit. This would have entitled Captain Glines to compensation for Active Duty for training service for 249 days for the year 1974, covering the period from April 19, 1974 (when Captain Glines was transferred), to December 31, 1974, and for 149 days in the year 1975, covering the period from January 1, 1975, through August 31, 1975. Captain Glines would also have been entitled to 48 Unit Training Assemblies and 66 Active Duty Days for each calendar year following 1975.

Although Captain Glines also seeks payment for medical expenses incurred by his dependents during the time

[2] Since completion of the navigator instructor upgrade program would only change Captain Gline's status within his existing rank as a captain, and would not affect his Captain's rank classification; completion of the upgrade program does not constitute a promotion. Awarding pay based on Active Duty call for a navigator instructor does not, therefore, require the Court to impermissibly speculate.



he claims he would have been on Active Duty, I find it is too speculative to say that the timing of the needed medical treatments would have coincided with the days Captain Glines would actually have been on Active Duty and would have been eligible for medical coverage. Accordingly, I deny recovery for Captain Gline's medical expenses or for those of his dependents.

Since Captain Glines made reasonable efforts to mitigate his damages by seeking both civilian employment and reassignment within the Air Force, there is no reason to pare down the back-pay entitlement as set out above for any lack of diligence on his part. However, the plaintiff concedes that the Air Force is entitled to a setoff for any civilian earnings made by Captain Glines during the time he would have been on Active Duty for training. *Yee* v. *United States*, 512 F.2d 1383 (Ct. Cl. 1975).

Accordingly, IT IS HEREBY ORDERED that:

1. Captain Glines shall recover back pay computed at the applicable military rates for 249 days of Active Duty for training service for the year 1974, commencing April 19 and continuing through December 31, 1974; and 149 days for the year 1975, commencing January 1, 1975, and continiung through August 31, 1975.

2. For each calendar year following 1975 until he is reinstated as a navigator instructor on an Active Duty basis in the Air Force Reserves, Captain Glines shall recover back pay computed at the applicable military rates for 48 Unit Training Assemblies and 66 Active Duty days.

3. The Air Force shall deduct from the award of back pay set forth in paragraph 1 above, the gross civilian earnings made by Captain Glines from April 19, 1974, through August 31, 1975.

4. Plaintiff shall submit to the Court on or before December 15, 1975, a certificate of counsel setting forth the sum of money due Captain Glines as back pay for the years 1974 and 1975, and a form of judgment consistent with this Opinion, both approved by counsel for the defendants.

The foregoing constitutes the Findings of Fact and Conclusions of Law required by Rule 52 of the Federal Rules of Civil Procedure.

Dated: November 26, 1975.

/s/ William H. Orrick, Jr.
WILLIAM H. ORRICK, JR.
United States District Judge



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C-74-1264-WHO

ALBERT EDWARD GLINES, Captain, USAF Reserve,
PLAINTIFF

*vs.*

JAMES L. WADE, Commander, 349th Material Airlift Wing, ET AL., DEFENDANTS

## JUDGMENT

This matter having come on for hearing on cross-motions for summary judgment on May 13, 1975, and the Court having entered a Memorandum Opinion and Order on May 30, 1975, and this matter having come on for trial on the issue of damages on September 26, 1975, and the Court having entered an Opinion and Order on November 26, 1975,

IT IS THE JUDGMENT OF THIS COURT:

1. Air Force Regulation 30-1(9) is hereby declared to be null, void and inoperative, as being in conflict with the First Amendment to the Constitution of the United States.
2. Air Force Regulation 35-15 paragraphs 3(a)(1) and 3(a)(2), in so far as they relate to petitions to the government for redress of grievances, are declared to be null, void and inoperative, as being in conflict with the First Amendment to the Constitution of the United States.
3. Defendants are hereby ordered to restore Plaintiff immediately to Ready Reserve status.
4. Defendants are further ordered to place Plaintiff immediately on Active Duty in the same capacity he held prior to his removal from Active Duty on April 17, 1974.
5. Defendants are further ordered to place Plaintiff

as soon as practicable on a program whereby he may regain the currency and proficiency that Plaintiff has lost as a result of his removal from Active Duty and transfer to Ready Reserve status.

6. Defendants are further ordered to place Plaintiff as soon as practicable on a C-5 upgrade program comparable to that in which Plaintiff was participating prior to his removal from Active Duty on April 17, 1974.

7. Defendants are hereby directed that they or their successors in office, agents, or employees expunge and destroy any reference relating to Plaintiff's preparing and circulating a petition to the government for redress of grievances and any administrative or disciplinary action resulting therefrom, contained in any record in the possession of the Department of Defense, the United States Air Force, or agents thereof.

8. Defendants and their successors in office, their agents, employees and persons working in concert with them are hereby enjoined from taking punitive action against Plaintiff for the petitioning activities that are the subject of this lawsuit.

9. Defendants and their successors in office, their agents, employees and persons working in concert with them are hereby enjoined from enforcing the terms of Air Force Regulation 30-1(9) and 35-15, so as to interfere with the circulation by Plaintiff of the petition which was the subject of this lawsuit, whether such circulation should take place on or off an Air Force facility.

10. Defendants are further ordered to pay to plaintiff for back pay through December 31, 1975, the sum of twenty-five thousand eight hundred fifty-seven and eighty hundredths dollars ($26,335.16), with interest thereon at the rate of seven (7) per cent per year as provided by law, and his costs of this action. The Air Force shall deduct from the gross back pay owed to plaintiff $4,302.25 —plaintiff's gross civilian pay between the time of dismissal and August 31, 1975. The net amount of back pay due to the plaintiff to December 31, 1975 is $22,032.91.

11. Defendants are further ordered to pay to plaintiff for back pay for each calendar year following 1975, until



plaintiff is reinstated as a navigator on an active duty basis in the Air Force Reserves, a sum of pay computed at applicable military rates for 48 Unit Training Assemblies and 66 active duty days per year, or pro rata for an elapsed portion of a year.

Dated: Jan. 16, 1976

/s/ William H. Orrick
U.S. District Judge

APPROVED AS TO FORM:

/s/ Stephen A. Shefler
STEPHEN A. SHEFLER
Assistant U.S. Attorney
for Defendants

SUPREME COURT OF THE UNITED STATES

No. 78-1006

HAROLD R. BROWN, Secretary of Defense, ET AL.,
PETITIONERS

*v.*

ALBERT EDWARD GLINES

ORDER ALLOWING CERTIORARI. Filed March 19, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. The case is set for oral argument in tandem with No. 78-599, *Secretary of the Navy* v. *Huff*.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 293519 393